IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5534 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BALVANT TEJSINGH RAJPUT BROTHER OF DETENU

Versus

COMMISSIONER OF POLICE AHMEDBAD

Appearance:

MR NM KAPADIA for Petitioner

MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/02/2000

ORAL JUDGEMENT

#. Heard Mr. N.M.Kapadia, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 6-7-1999 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad against the detenu in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced on running page 24 to 26 interalia indicate that the detenu is involved in three prohibition cases registered at Nashabandhi Police Station (West), Ahmedabad, Nashabandhi Station, Gandhinagar and Nashabandhi Station (North Division), Ahmedabad City on 27-12-97, 19-5-99 and 14-6-99 respectively. That in each case, the Indian made Foreign Liquor has been seized from the possession of the detenu. Furthermore, two witnesses on assurance of their anonymity have given their statement dated 5-7-99 and 6-7-99 against the detenu regarding the anti social activities of the detenu, wherein, alleged incidents dated 20-6-99 and 10-6-99 are referred to. That on the basis of the said material, the respondent No. 1 as the detaining authority has come to the conclusion that the detenu / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the detenu from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and as such, the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the detenu at bar that the respondents have failed to supply the documents referred to and relied on in the grounds of detention and more particularly the order passed by the High Court dated 2-7-1996 in connection with the detention order No : PCB/DTN/PASA/9/96 dated 17-1-1996 passed against the detenu which has prevented the detenu from making effective representation against his detention under challenge and as such, the constitutional mandate under Article 22(5) is violated and the continued detention of the detenu has become invalid.

#. That the respondent No.1 has filed affidavit in reply dated 19th February 2000. However, the factum regarding the non supply of order of High Court dated 2-7-1996 revoking the detention order against the detenu has not been denied in the affidavit, as such on facts,

it is necessary to give finding that the detenu was not supplied the documents which are referred to and relied on in the grounds of detention by the detaining authority which has violated the constitutional mandate under Article 22(5) and as such continued detention being illegal, the detention order is required to be quashed and set aside.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 6-7-99 passed by respondent No. 1 - The Commissioner of Police, Ahmedabad City against the detenu is hereby quashed and set aside. The detenu - KARANSINGH @ K.T. TEJSINGH RAJPUT is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 23-2-2000 [A.K.Trivedi, J.]

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